**Transitional Credit - Reality or mirage?**

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Transitional Provisions under GST Act is introduced to enable the tax payers to claim their eligible credit of the tax/duty already paid on the goods and services in the Pre- GST regime and to carry forward the same to the GST regime. This transitional credit can be used to discharge their tax liability in the GST regime. Section 140 of CGST Act, 2017 prescribes eligibility and conditions for taking credit whereas Rule 117 of CGST Rules, 2017 prescribes procedure for taking credit. Rule 117 prescribes format of declaration for various situations such as to carry forward the closing balance of credit, to take the tax which was not taken under the erstwhile law but eligible under GST Act, etc. Another condition prescribed under the said Rule is that the tax payer has to file a declaration in Form TRAN 1on or before 27.12.2017. Further, the Rule prescribes that the declaration has to be filed electronically on the GST portal and no manual filing is envisaged

2. However, many tax payers could not file the Tran-1 declaration on account of technical glitches faced by them while submitting online. On the basis of representations filed by the aggrieved persons,who were unable to file the declarations due to technical glitches, the due date was extended thrice and the latest due date is 31stMarch 2020. However, the government has not given any opportunity to the persons who were not able to file TRAN 1 due to various other reasons, such as:-

1. Difficulty in understanding the various columns provided in the Transition Form.
2. Attempted filing of TRAN 1 but no evidence to prove the same.
3. Unaware of the procedures and the due dates in filing TRAN 1.

All the above mentioned categories of tax payers do not have the option to carry forward their eligible credit and it seriously affects their cash flow. Further the liability to pay GST on sale of stock carried from the previous tax regime without corresponding input tax credit lled to double taxation and it defeats the very purpose of seamless flow of credit under GST regime.

3. In a case pertaining to **Adfert Technologies Ltd** as reported in 2019 (11) TMI 282, the Punjab and Haryana High Court has held as under:-

“The implementation undertaken in the new GST regime is completely electronic based and the returns filed therein are a system generated one; most of the people in India are not well acquainted with electronic mechanisms. The GST regime still being in the trial and error phase and the IT platform through which it works being new, it may not be justifiable to expect all the individuals having their business under GST registration to be aware of the due dates and the procedures followed in carrying forward the un availed credit within such short span of 90 days from the appointed day.Further, the due date contemplated under the law to claim the transitional credit is procedural in nature. Even , under the Pre-GST regime, it is a settled legal position that substantive input credits cannot be denied or altered on account of procedural grounds. Under such circumstances, liberal view has to be taken by the government while implementing this simple one indirect tax law instead of suffocating the tax payer with lot of procedures.One of the progressive ideal of GST is to avoid cascading taxes, if the legitimately accrued credits are not been provided to the assesse for the mere reason that they have failed to file their declaration within the due date is completely unfair.

Relying on the decision mentioned supra, the Hon’ble High Court of Punjab and Haryana in the case of **Hans Raj Sons reported in 2019-TIOL-2891-HC-P&H-GST allowed the petitioner to file their form Tran-1 by December, 31st 2019. Moreover, it has also clarified that** in case the petitioner is hampered in any manner from availing the benefit of aforesaid judgment, due to non opening of the Portal by the Respondents, then the petitioner shall be permitted, in the alternative to claim the benefit of unutilized credit in their GST-3B Forms to be filed for the month of January, 2020 either electronically or manually.

4. Apart from the above, various High Courts have held that eligible credit cannot be denied on account of time limit as substantive rights cannot be curtailed by Rules as listed below:-

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| ***SL.No*** | ***Citation*** | ***Party Name*** |
| ***1*** | ***2020 (1) TMI 568-P&H- HC*** | *Silicon Constructions Pvt Ltd****, Girdhari Lal Aggarwal Contractors Pvt. Ltd*** |
| *2* | *2019-TIOL-2068-HC-AHM-GST* | *Siddharth Enterprises*  |
| *3* | ***2019-TIOL-1661-HC-DEL-GST*** | *Uninav Developers Pvt Ltd*  |
| *4* | ***2019-TIOL-1902-HC-DEL-GST*** | *Tyre Plaza*  |
| *5* | ***2019-TIOL-1060-HC-DEL-GST*** | *Bhargava Motors*  |
| *6* | ***2019-TIOL-1509-HC-DEL-GST*** | *Kusum Enterprises Pvt Ltd*  |
| *7* | ***2019-TIOL-2153-HC-DEL-GST*** | *KrishAutomotorsPvt Ltd*  |
| *8* | ***2019-TIOL-2289-HC-DEL-GST*** | *Aadinath Industries and Anr*  |
| *9* | ***2019-TIOL-2544-HC-DEL-GST]*** | *Arora and Company Union of India and Others* |
| *10* | *2019-TIOL-1564-HC-DEL-GST* | *Blue Bird Pure Pvt. Ltd* |
| *11* | 2019-TIOL-2421-HC-DEL-GST | *Godrej And Boyce Mfg Company Ltd* |

In the case of **SRC Aviation Pvt Ltd reported in 2019-TIOL-2931-HC-DEL-GST** the Hon’ble High Court, Delhi has held that many dealers and traders come from rural and semi literate backgrounds and may not have had the presence of mind to create any record of having tried and failed to upload the Form GST TRAN-1.Hence they cannot be made to suffer, more so when the system itself is not efficient besides, the credit in favour of an assessee is property & the assessee could not be deprived of the said property save by authority of law in terms of Article 300 (A) of the Constitution of India.

5. In light of the decisions referred supra, the government should provide an opportunity to file Tran 1 declaration to all the taxpayers who have not filed their Tran 1 without insisting upon the evidence of technical glitches as otherwise it will end up in significant number of court cases which is against the national litigation policy.